IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17387 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RUSTOM BILALKHAN PATHAN

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 17387 of 2003

MR TR MISHRA for Petitioner No. 1

MRS FALGUNI PATEL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/06/2004

ORAL JUDGEMENT

Rule. Mrs.Falguni Patel, learned AGP appears and waives notice of rule on behalf of the respondents. At the request of the learned advocates appearing for the

parties, the petition is being taken up for final disposal today.

2. By the present petition, the petitioner has challenged the award dated 1.10.2003 passed by the Labour Court, Bhavnagar by which the reference of the workman was rejected. Learned advocate for the petitioner draws my attention to para 10 of the award and submits that the sole ground for rejection of the reference was that the Irrigation Department is not an "industry" and that therefore, the reference is not maintainable. The Labour Court, Bhavnagar, had relied upon a decision of the Division Bench of this High Court and come to the above conclusion.

3. The attention of this Court has been drawn to a recent decision of the Larger Bench of this Court dated 12.4.2004 in Gujarat Forest Produce Gatherers and Forest Workers Union v. State of Gujarat, wherein the Larger Bench of this High Court has been pleased to hold that the earlier decisions of this High Court reported in 28(2) GLR 1070 (PWD Employees Union v. State of Gujarat) and 2000 (1) GLH 482 (SC Thakore v. State of Gujarat) as also 2003(2) GLH 420 to the extent they take the view that the Irrigation Department is not an "industry" are not binding decisions. Based on this judgment of the Larger Bench of this High Court, the learned advocate for the petitioner submits that the view taken by the Labour Court is erroneous and therefore, the matter is required to be remanded for consideration of the reference on merits on the premise that the Irrigation Department is an "industry".

4. Considering the submissions made and the admitted position that now the Larger Bench of this Court has taken the view that the earlier decisions holding that Irrigation Department is not an "industry" are not binding decisions, the impugned award of the Labour Court, Bhavnagar is required to be quashed and set aside. In view of the fact that by the Larger Bench decision of this Court the issue regarding the Irrigation Department being an "industry" is concluded, the Labour Court, Bhavnagar is further directed to take up the hearing of the reference on merits and decide the same in accordance with law.

5. In the result, the impugned award dated 1.10.2003 is quashed and set aside. The matter is remanded to the Labour Court, Bhavnagar for consideration of the reference on merits keeping in view the above observations made by this Court. Rule is made absolute

to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)